

95-00188

OFFICE OF THE ATTORNEY GENERAL



JEFF SESSIONS
ATTORNEY GENERAL
STATE OF ALABAMA

APR 17 1995

ALABAMA STATE HOUSE
11 SOUTH UNION STREET
MONTGOMERY, ALABAMA 36130
AREA (334) 242-7300

Honorable Ron Jones
Commissioner
Department of Corrections
50 North Ripley Street
Montgomery, AL 36130

Prisons and Prisoners -
Executions - Employees,
Employers, Employment

An "Acting" Warden is allowed
to perform all duties of a
merit position Warden to
include acting as executioner
as required by statute.

Dear Commissioner Jones:

This opinion is issued in response to your request for
an opinion from the Attorney General.

QUESTION

On March 18, 1995, due to budgetary restraints, a Regional Coordinator assumed the duties as "Acting Warden" at Holman Correctional Facility. Presently, there are two executions set which will occur while he is in the position of "Acting Warden." Under the law, the executioner is the Warden of Holman Correctional Facility. Can the "Acting Warden" perform these duties?

Exhibit 6

Jenkins, USDC 05 cv 1049
SPD Mtn for Summary Judgment

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FACTS AND ANALYSIS

The law to which your question refers can be found in Code of Alabama 1975, § 15-18-82(c), which states:

"The warden of the William C. Holman unit of the prison system at Atmore or, in the case of his death, disability or absence, his deputy, shall be the executioner. In the event of the death or disability or absence of both the warden and deputy, the executioner shall be that person appointed by the commissioner of corrections."

From your question, it appears that Holman does not have in place an employee classified by the State of Alabama Merit System as a "Warden," but an employee with the classification of "Regional Coordinator" temporarily assigned as "Acting Warden." Therefore, it must be determined whether an "acting" warden can assume the statutory responsibilities of Warden.

The American Heritage Dictionary of the English language defines "act" as: "to serve or function as a substitute for someone or something." Clearly, an individual who has been designated by an appointing authority to be "acting" has the same authority as an individual who holds that office or position by virtue of the merit system or confirmed appointment. This office has stated in an opinion to Honorable Perry O. Hooper, Jr., A.G. No. 93-00292, that if there are no statutory prohibitions, a classified employee may be designated as an "acting officer" within state government. As this office is not aware of any statutory prohibition the designation of a Regional Coordinator as "Acting" Warden entitles that person to exercise all authority and duties of a warden. The Acting Warden is, therefore, the executioner for all executions held at the William Holman facility.

CONCLUSION

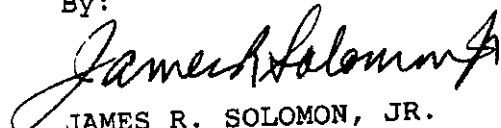
An "Acting" Warden is allowed to perform all duties of a merit position Warden to include acting as executioner as required by statute.

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I hope this sufficiently answers your question. If our office can be of further assistance, please contact James R. Solomon, Jr. of my staff.

Sincerely,

JEFF SESSIONS
Attorney General
By:


JAMES R. SOLOMON, JR.
Chief, Opinions Division

JS/JRS/jho
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